

STATE OF TENNESSEE

Office of the Attorney General



ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE, TN 37202

Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

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TN REGULATORY AUTHORITY
DOCKET ROOM
MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

September 24, 2002

Chairman Sara Kyle
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**RE: IN RE: UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY
CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT
Docket No.: 01-00704**

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of the Office of the Attorney General's Motion to Compel Answers to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission and supporting Memorandum of Law in support thereof. We request that these documents be filed with the TRA in this docket. Please be advised that all parties of record have been served copies of these documents. If you have any questions, kindly contact me at (615) 532-3382. Thank you very much.

Sincerely,

Shilina B. Chatterjee

Shilina B. Chatterjee
Assistant Attorney General

Enclosures

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

) **DOCKET NO. 01-00704**

)
UNITED CITIES GAS COMPANY, a)
Division of ATMOS ENERGY)
CORPORATION INCENTIVE PLAN)
ACCOUNT (IPA) AUDIT)

**MOTION TO COMPEL ANSWERS TO ATTORNEY GENERAL'S FIRST
SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS & THINGS AND REQUESTS FOR ADMISSION SERVED
UPON UNITED CITIES GAS COMPANY**

The Tennessee Office of the Attorney General, through the Consumer Advocate & Protection Division ("Attorney General"), hereby moves that the Tennessee Regulatory Authority ("TRA") compel United Cities Gas Company ("UCG"), pursuant to Rule 37.01(2) of the Tennessee Rules of Civil Procedure ("T.R.C.P."), to make full and complete discovery responses to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company, which were served on UCG on September 4, 2002. As grounds for this motion, the Attorney General states that:

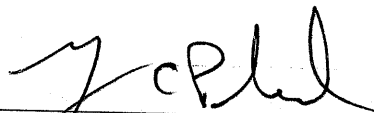
1. The Attorney General served a First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company on September 4, 2002. Copies of the discovery requests are attached hereto as Exhibits A.

2. On August 29, 2002, Richard Collier, Esq., Hearing Officer issued an Order Scheduling Discovery, Response and Oral Argument Relative to Motions for Summary Judgment. A copy is attached hereto as Exhibit B.
3. On September 19, 2002, Joe Conner, Esq. telephoned Russell T. Perkins, Deputy of the Consumer Advocate & Protection Division of the Office of the Attorney General and requested a one day extension to respond to the First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company, which were served on UCG on September 4, 2002. A copy is attached hereto as Exhibit C.
4. On Friday, September 20, 2002, at 4:49:08 p.m., an unsigned draft response were sent via electronic mail to Russell T. Perkins, Deputy Attorney General of the Consumer Advocate & Protection Division of the Office of the Attorney General. Service was never properly effectuated upon the Attorney General. A copy is attached hereto as Exhibit D.
5. On September 20, 2002, UCG had not filed their response with the Tennessee Regulatory Authority and failed to file by the filing deadline established by scheduling order issued by the Hearing Officer Richard Collier. Additionally, UCG has not served their Responses to the First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission upon the Attorney General. As of September 23, 2002, UCG had not filed their response at the TRA and has not properly served their response upon the Attorney General.

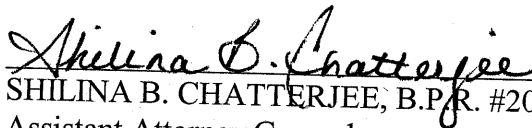
As further grounds for this Motion, the Attorney General submits herewith a Memorandum of Law. For the above stated reasons, the Attorney General submits this Motion to Compel and the Exhibits attached hereto and requests that the TRA enter an Order striking the responses received as untimely in accordance with TRA rules and T.C.P.A. and compel UCG to provide full and complete responses to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company. The Attorney General requests that the TRA consider all other appropriate sanctions, including dismissal of UCG's objection and/or exclusion of witnesses not timely

identified and/or expert witnesses to which expert witness interrogatory responses have not been supplied.

RESPECTFULLY SUBMITTED,



TIMOTHY C. PHILLIPS, B.P.R. #12751
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
(615) 741-3533



SHILINA B. CHATTERJEE, B.P.R. #20689
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 532-3382

Dated: September 24, 2002

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was served via facsimile and/or hand delivery on September 24, 2002.

Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505
(615) 741-2904

Richard Collier, Esq.
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505
(615) 741-5015

Joe A. Conner, Esq.
Baker, Donelson, Bearman & Caldwell
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450-1800
(423) 752-9527

Jon Wike, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
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(615) 532-7479 (Fax)


Shilina B. Chatterjee
Assistant Attorney General

58494

STATE OF TENNESSEE

Office of the Attorney General



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ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
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TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

September 4, 2002

Chairman Sara Kyle
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**RE: IN RE: UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY
CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT
Docket No.: 01-00704**

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company. We request that these documents be filed with the TRA in this docket. Please be advised that all parties of record have been served copies of these documents. If you have any questions, kindly contact me at (615) 532-3382. Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee
Assistant Attorney General

Enclosures

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

UNITED CITIES GAS COMPANY, a
Division of ATMOS ENERGY
CORPORATION INCENTIVE PLAN
ACCOUNT (IPA) AUDIT

) DOCKET NO. 01-00704
)
)
)
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**ATTORNEY GENERAL'S FIRST SET OF INTERROGATORIES, REQUESTS
FOR PRODUCTION OF DOCUMENTS & THINGS AND REQUESTS FOR
ADMISSION TO UNITED CITIES GAS COMPANY**

The Tennessee Office of the Attorney General, through the Consumer Advocate & Protection Division ("Attorney General"), propounds the following Interrogatories, Requests for Production, and Requests for Admission upon United Cities Gas Company, a Division of Atmos Energy Corporation ("UCG"), pursuant to Rules 26, 33, 34 and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg 1220-1-2-.11. We request that full and complete responses be provided, under oath, pursuant to Rule 36 of the Tennessee Rules of Civil Procedure. The documents and things requested are to be produced at the Office of the Tennessee Attorney General and Reporter, Consumer Advocate & Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, c/o Russell T. Perkins, by September 19, 2002, or alternatively, if another mutually agreeable date and place are agreed upon by the parties.

PRELIMINARY MATTERS AND DEFINITIONS

These Interrogatories and Requests for Production are to be considered continuing in nature, and are to be supplemented from time to time as information is received by the UCG and/or Atmos Energy Corporation which would make a prior response inaccurate, incomplete, or incorrect. In addition, the Attorney General requests that UCG seasonably supplement responses hereto with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert at hearing, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

Each Interrogatory and Request for Production calls for all knowledge which UCG has as a party, as distinguished from the solitary knowledge of UCG as an entity or person. That is to say, the answers are to include all knowledge available to UCG, as a party, or Atmos Energy Corporation, whether it be UCG's or Atmos' solitary knowledge or the knowledge of UCG's attorney or other representative.

For purposes of these Interrogatories, Requests for Production of Documents, and Requests for Admission, the term "you" shall mean and include: UCG, Atmos Energy Corporation and all employees, agents and representatives thereof.

The term "identity" and "identify" as used herein, with respect to any person, means to provide their name, date of birth, current residence address, current residence telephone number, current business address, current business telephone number, and the occupation or job title of that person; with respect to an entity, those terms mean to provide the name by which said entity is commonly known, the current address of its principal place of business, and the nature of

business currently conducted by that entity; with respect to any document, those terms mean to provide the date of the document, the nature of the document, and the title (if any) of the document.

The term "document" as used herein, means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin or location, of any book, pamphlet, periodical, letter, note, memorandum (including memoranda, note or report of a meeting or conversation), photograph, videotape, audio tape, computer disk, e-mail, or any other written, typed, reported, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, which is in your possession, custody or control or which was, but is no longer, in your possession, custody, or control. If any such document or thing was, but no longer is, in your possession or control, state what disposition was made of it and when.

If you produce documents in response to these Interrogatories and Requests for Production of Documents, please produce the original of each document or, in the alternative, identify the location of the original document. If the "original" document is itself a copy, that copy should be produced as the original.

If any of the interrogatories are not answered on the basis of privilege or immunity, include in your response to each such interrogatory a written statement evidencing:

- a. the nature of the communication;
- b. the date of the communication;
- c. the identity of the persons present at such communication; and
- d. a brief description of the communication sufficient to allow the Court to rule

on a motion to compel.

If any of the requested documents are not produced on the basis of privilege or immunity, include in your response to production, for each document, a written statement evidencing:

- a. the nature of the document;
- b. the date;
- c. the author of the document;
- d. the recipient;
- e. the sender; and
- f. a brief description of the contents sufficient to allow the Court to rule on a motion to compel.

INTERROGATORIES

Consistent with the preceding definitions and preliminary matters, answer under oath the following specific interrogatories.

1. Identify the person who has responded to these interrogatories or who has furnished information or otherwise assisted in the formation of the responses of these interrogatories. If more than one person supplies information in response to these interrogatories, please specify by each person's name the number(s) of the interrogatory(ies) to which that person is responding.

RESPONSE:

2. Identify all persons known to you, your attorney, or other agent who have knowledge, information or possess any document(s) or claim to have knowledge, information or possess any

document(s) regarding the incidents and/or transactions which form the basis of UCG contesting the audit findings of the Energy and Water Division of the TRA in Docket No. 01-00704.

RESPONSE:

3. If it is claimed that the TRA, or any individual claimed to be an employee, agent, or representative of the TRA, made any representations, statements, purported admissions of liability or responsibility, or any other statements whatsoever, to you, to any attorney for or representative of you, or to any third party, as relates to the incidents and/or transactions which form the basis of UCG contesting the audit findings of the Energy and Water Division of the TRA in Docket No. 01-00704, then, with respect to each, state:

a. the date, time and place;

RESPONSE:

b. the identity of the person to whom such statement was made;

RESPONSE:

c. the identity of all persons present;

RESPONSE:

d. the substance of each such statement; and

RESPONSE:

e. whether such statement was recorded, written, or whether notes were made to refresh someone's recollection, and if so, the present location of each such recording, writing, or notes.

RESPONSE:

4. With respect to each person you expect to call as an expert witness at the hearing of this matter, state:

a. their full name and work address;

RESPONSE:

b. each subject matter about which such witness is expected to testify;

RESPONSE:

c. the substance of the facts and opinions to which the expert is expected to testify;

RESPONSE:

d. a summary of the grounds or basis of each opinion to which such witness is expected to testify; and

RESPONSE:

e. whether or not the expert has prepared a report, letter of memorandum of his findings, conclusions or opinions.

RESPONSE:

5. Identify all other experts consulted or engaged by you, your attorney or your agents regarding your contesting of the audit findings of the Energy and Water Division of the TRA in Docket No. 01-00704.

RESPONSE:

6. If UCG or Atmos has informed or educated its Tennessee customers that their natural-gas bills are affected by the company's "gas procurement incentive mechanism," provide copies of all pertinent documents.

7. Where UCG or Atmos, or anyone on behalf of UCG or Atmos, has intervened in any proceedings before the Federal Energy Regulatory Commission at any time since the company's "gas procurement incentive mechanism" began in Tennessee, name the FERC dockets and provide full copies of pleadings, briefs and testimony made by the company, or on its behalf, in those dockets.

RESPONSE:

8. If UCG or Atmos have any criteria for intervening in FERC dockets, provide copies of all documents pertaining to such criteria.

RESPONSE:

9. Provide copies of all documents, including email and minutes of the company's Board of Directors, in the possession of the company or its consultants, where the documents are not protected by the attorney-client privilege and where UCG or Atmos discuss the "gas procurement incentive mechanism" in Tennessee.

RESPONSE:

10. What pipelines have transported natural gas for UCG or Atmos since the time the "gas procurement incentive mechanism" began in Tennessee?

RESPONSE:

11. If UCG or Atmos have at any time since the "gas procurement incentive mechanism" began in Tennessee and before November 2000, paid a pipeline to transport natural gas where the price for transport was less than the maximum price for such transport listed in the pipeline's tariffs filed with FERC, then provide a record of each transaction, where each record lists the pipeline, its maximum price, the price paid by UCG or Atmos, the month and year of the transaction.

RESPONSE:

12. Explain why a pipeline would transport gas for UCG or Atmos at a price less than the maximum price for transport.

RESPONSE:

13. If UCG or Atmos knows how a pipeline calculates its maximum price to transport gas, show the calculations that lead to the maximum price.

RESPONSE:

14. If UCG or Atmos has informed any pipeline about the "gas procurement incentive mechanism" in Tennessee, provide copies of all documents, including any contract pending or contingent with any pipeline that knows of the "gas procurement incentive mechanism" in Tennessee, any email, telephone logs and any other written documents, including minutes of the company's Board of Directors, where UCG or Atmos told the pipeline about the "gas procurement incentive mechanism" in Tennessee.

RESPONSE:

15. If UCG or Atmos or their consultants informed any pipeline that the UCG or Atmos intends to use the pipeline's maximum prices in the "gas procurement incentive mechanism" in Tennessee, provide copies any email, telephone logs and any other written documents, including minutes of the company's Board of Directors, where UCG or Atmos told the pipeline about the intent to use the pipeline's maximum prices in the "gas procurement incentive mechanism" in Tennessee.

RESPONSE:

16. If UCG or Atmos or their consultants have ever offered or intend to offer any pipeline a *quid pro quo* or any other consideration in exchange for a pipeline transporting gas for UCG or Atmos at a price less the pipeline's maximum price, then explain why a *quid pro quo* or other consideration is necessary to encourage a pipeline to transport gas at less than the maximum price.

RESPONSE:

17. If any pipeline ever requested from UCG or Atmos or their consultants a *quid pro quo* or any other consideration in exchange for the pipeline transporting gas for UCG or Atmos at a price less the pipeline's maximum price, then explain why a *quid pro quo* or other consideration is necessary to encourage a pipeline to transport gas at less than the maximum price.

RESPONSE:

18. What incentive does UCG or Atmos have to prevent the pipeline from raising its maximum price when UCG or Atmos is allowed to keep a portion of the difference between the actual price paid and the maximum price?

RESPONSE:

19. If UCG or Atmos provided to any state regulatory agency (other than the Tennessee Regulatory Authority) testimony, briefs and pleadings regarding the use of maximum pipeline prices in any gas-incentive program or mechanism carried on in states beside Tennessee, provide full copies of those documents.

RESPONSE:

20. If your response to any Request for Admission is other than an unqualified admission, state for each such Request for Admission the following:

- a. all facts that you contend support in any manner your refusal to admit or your qualification of your admission;

RESPONSE:

- b. for any information you contend is incorrect or inaccurate provide the correct information;

RESPONSE:

- c. identify all documents, or any tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission;

RESPONSE:

- d. the name and address of the custodian of all tangible things identified in response to subsection (b) of this interrogatory; and

RESPONSE:

- e. the name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or your qualification of your admission.

RESPONSE:

21. If you fail to admit or deny any Request for Admission based on your asserted lack of information or knowledge, for each such Request for Admission:

- a. describe your efforts toward satisfying the reasonable inquiry requirement of Rule 36 of the Tenn. R. Civ. Pro.;

RESPONSE:

- b. identify all documents or any other tangible or intangible thing that you reviewed prior to determining that you lacked sufficient information or knowledge to be able to admit or deny the request;

RESPONSE:

- c. describe and identify what information is known or readily obtainable by you through reasonable inquiry;

RESPONSE:

- d. state the grounds for your position that the information set out in your response to subsection (c) of this interrogatory is insufficient to enable you to admit or deny the request.

RESPONSE:

REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Consistent with the preceding definitions and preliminary matters, you are requested to produce the documents and things described in the following paragraphs.

1. Copies of any and all documents identified in your answers or responses to these interrogatories.

RESPONSE:

2. Copies of any and all documents reviewed to prepare your answers or responses to these interrogatories and/or requests for admissions.

RESPONSE:

3. Any and all expert reports which have been obtained from any expert.

RESPONSE:

4. Copies of any and all statements previously made by the TRA concerning the subject matter of this lawsuit, including, without limitation, any written statements signed or otherwise adopted or approved by the TRA, and any stenographic, mechanical, electrical, or other type of recording or transcription thereof made by TRA and contemporaneously recorded.

RESPONSE:

5. Each document, photograph, or any other article or thing whatsoever, which you claim to corroborate any part of your contesting of the audit findings of the Energy and Water

Division of TRA in Docket No. 01-00704 (which have not been previously produced or filed in the record), whether as to the issues of liability, causation, damages, credibility or any other issue, or which is adverse to your contentions regarding the issues of liability, causation, damages, or any other issue.

RESPONSE:

VERIFICATION

I, _____, hereby depose and say, after having been first duly sworn, that I have read the foregoing Interrogatories and the answers and responses thereto are true according to the best of my knowledge, information, and belief.

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, with whom I am personally acquainted, and who acknowledged that he has answered the foregoing Interrogatories and executed the foregoing instrument for the purposes therein contained.

Witness my hand, at office, on this _____ day of _____, 2002.

NOTARY PUBLIC

My Commission Expires: _____

REQUESTS FOR ADMISSION

Consistent with the proceeding definitions and preliminary matters, you are requested to admit to the following statements of fact.

1. UCG's inclusion in its Performance Based Ratemaking ("PBR") of the savings resulting from negotiated transportation discounted contracts is inconsistent with the TRA's Final Order in Docket No. 97-01364.

RESPONSE:

2. UCG supplemented their current formulas with additional calculations that are not consistent with the TRA's Final Order on Phase II in Docket No. 97-01364.

RESPONSE:

3. UCG inclusion of the negotiated transportation contracts in the PBR for the 2000-2001 plan year is not consistent with the tariff filed by UCG in this matter.

RESPONSE:

4. The final calculations that were determined by UCG do not conform to its incentive plan approved in TRA Docket No. 97-01364.

RESPONSE:

5. There is no market index of maximum prices for the transport of natural gas.

RESPONSE:

6. The PBR covers all the associated commodity costs for purchasing, delivering and storing of gas to the end consumer.

RESPONSE:

7. In the Original Docket (Docket No. 97-01364), the TRA collapsed the original five incentive mechanisms of the PBR: (1) gas procurement, (2) seasonal pricing differential, (3) storage gas commodity, (4) transportation capacity cost and (5) storage capacity cost into two mechanisms: (1) gas commodity mechanism and (2) capacity release sales mechanism.

RESPONSE:

8. When the five incentive mechanisms were collapsed into two (2), UCG indicated that the formulas used for these calculations did not need to be changed.

RESPONSE:

9. The indices used to calculate transportation costs account for the effects of market-driven pipeline transportation rates.

RESPONSE:

10. The petition filed on March 31, 1997 by UCG for permission to use an experimental incentive plan does not mention discounted transportation contracts in either the gas commodity or the capacity release sale mechanisms.

RESPONSE:

11. The calculations used to determine the "avoided costs" were transportation rates negotiated in the contract subtracted from the minimum pipeline tariff rates approved by FERC.

RESPONSE:

12. The current method used to calculate benefits for commodity savings is to average the three indices and then multiply it by UCG's total MCF gas purchases.

RESPONSE:

13. Under the PBR, when the commodity costs of gas falls within a deadband of 97.7% to 102% of the total benchmark amounts there is no incentive savings or costs.

RESPONSE:

14. A component of the gas procurement mechanism allows UCG to retain 50% of the savings on gas purchases that are made below 97.7% of the benchmark.

RESPONSE:

15. The benchmark for the PBR is a price index that is composed of the simple average computed each month of the appropriate *Inside FERC Gas Market Report*, *Natural Gas Intelligence* and *NYMEX* indices.

RESPONSE:

16. During the 2000-2001 plan year, UCG had savings on gas purchases for two (2) months.

RESPONSE:

17. UCG reported \$1,052,531 in savings from the negotiated transportation contracts and retained \$526,265.

RESPONSE:

18. The alleged savings generated from the negotiated transportation contracts and the alleged savings from the NORA calculations of avoided transportation costs included in the 2000-2001 plan year were not previously included in the first full year of the approved permanent plan.

RESPONSE:

19. UCG's method for calculation of interest was computed for the 2000-2001 plan year is not calculated the same as the previous plan year.

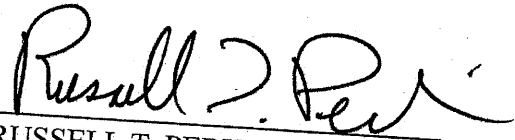
RESPONSE:

As to the Request for Admissions,

[Print Name]
Attorney for defendant

Respectfully submitted,

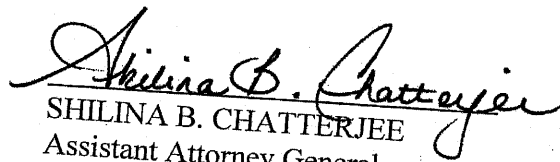
FOR THE STATE OF TENNESSEE:



RUSSELL T. PERKINS
Deputy Attorney General
B.P.R. #10282



TIMOTHY C. PHILLIPS
Assistant Attorney General
B.P.R. #12751
Consumer Advocate & Protection Division
425 Fifth Avenue, North, 3RD Floor
Nashville, TN 37243-0491
(615) 741-3533



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Assistant Attorney General
B.P.R. #20689
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CERTIFICATE OF SERVICE

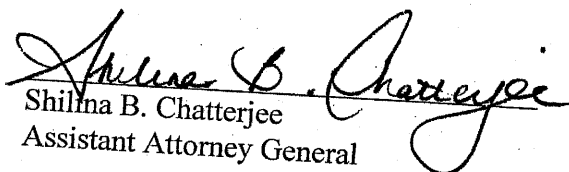
I hereby certify that a true and correct copy of the foregoing was served via facsimile and/or hand delivery on September 4, 2002.

Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505
(615) 741-2904

Richard Collier, Esq.
General Counsel
Tennessee Regulatory Authority
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(423) 752-9527

Jon Wike, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505
(615) 532-7479 (Fax)


Shilina B. Chatterjee
Assistant Attorney General

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

August 29, 2002

IN RE:

**UNITED CITIES GAS COMPANY, A DIVISION OF
ATMOS ENERGY CORPORATION, INCENTIVE PLAN
ACCOUNT (IPA) AUDIT**

**DOCKET NO.
01-00704**

**ORDER SCHEDULING DISCOVERY, RESPONSE AND ORAL ARGUMENT
RELATIVE TO MOTIONS FOR SUMMARY JUDGMENT**

This matter is before the Hearing Officer to render a decision on the issues raised by the parties and to enter an initial order on the merits. On August 28, 2002, a telephonic Scheduling Conference was held between all parties: United Cities Gas Company ("UCG"); the Consumer Advocate and Protection Division, Office of the Attorney General ("Consumer Advocate") and the Tennessee Regulatory Authority Staff ("TRA Staff"). During the Scheduling Conference, the parties agreed to the following schedule:

September 4, 2002	Consumer Advocate's and TRA Staff's Discovery Requests
September 6, 2002	Consumer Advocate's and TRA Staff's Responses to UCG's Discovery Requests, including Objections
September 19, 2002	UCG's Response to Discovery Requests, including Objections
September 24, 2002	(Any) Motions to Compel Discovery

From: "Conner, Joe" <jconner@bdbc.com>
To: "Russell Perkins" <Russell.Perkins@state.tn.us>, "Conner, Joe" <jconner@bdbc.com>
Date: 9/19/02 1:08PM
Subject: RE: UCG

Thank you Russell.....

-----Original Message-----

From: Russell Perkins [mailto:Russell.Perkins@state.tn.us]
Sent: Thursday, September 19, 2002 1:47 PM
To: jconner@bdbc.com
Cc: Shilina Chatterjee; Steve Brown; Timothy Phillips
Subject: UCG

I do not object to the one day extension of time you requested by v-mail today.

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CC: Shilina Chatterjee <IC02SBC1.IC01S01.sd05@state.tn.us>, Steve Brown <IC02SNB.IC01S01.sd05@state.tn.us>, Timothy Phillips <IC02TCP.IC01S01.sd05@state.tn.us>

From: "Conner, Joe" <jconner@bdbc.com>
To: "russell.perkins@state.tn.us" <russell.perkins@state.tn.us>,
"timothy.phillips@state.tn.us" <timothy.phillips@state.tn.us>, "jon.wike@state.tn.us"
<jon.wike@state.tn.us>
Date: 9/20/02 4:49PM
Subject: UCG Responses to Discovery

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CC: "patricia.childers@unitedcitiesgas.com" <patricia.childers@unitedcitiesgas.com>,
"Conner, Joe" <jconner@bdbc.com>

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IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:) DOCKET NO. 01-00704
)
)
UNITED CITIES GAS COMPANY, a)
Division of ATMOS ENERGY)
CORPORATION INCENTIVE PLAN)
ACCOUNT (IPA) AUDIT)

**UNITED CITIES GAS COMPANY'S RESPONSES TO
ATTORNEY GENERAL'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS & THINGS
AND REQUESTS FOR ADMISSION**

United Cities Gas Company ("UCG") submits the following in response to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission.

GENERAL OBJECTIONS AND PRELIMINARY STATEMENTS

UCG objects to the Attorney General's definition of "you" and "your" on the grounds that it is overly broad.

UCG's responses to the Attorney General's interrogatories are made without waiving or intending to waive the right to object to the use of any information provided in response in any subsequent proceeding or trial of this or any other action. UCG's responses to Attorney General's interrogatories are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future interrogatory, and UCG specifically reserves the right to interpose any objection to further interrogatories notwithstanding

any response or lack of objection made in this response.

UCG objects to each discovery request to the extent it seeks information which is the subject of the attorney-client privilege, information which has been prepared in anticipation of litigation and is thus immune from discovery under the work product doctrine, or information otherwise privileged or protected from disclosure.

UCG objects to the definitions and instructions contained in the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to the extent they impose greater obligations than those imposed by Tennessee law.

UCG is providing these responses subject to its general and specific objections.

UCG will supplement its responses in accordance with the requirements of state law.

UCG expressly incorporates these general objections into its responses set forth below.

INTERROGATORIES

Consistent with the preceding definitions and preliminary matters, answer under oath the following specific interrogatories.

1. Identify the person who has responded to these interrogatories or who has furnished information or otherwise assisted in the formation of the responses of these interrogatories. If more than one person supplies information in response to these interrogatories, please specify by each person's name the number(s) of the interrogatory(ies) to which that person is responding.

RESPONSE: Patricia Childers and Joe A. Conner

Identify all persons known to you, your attorney, or other agent who have knowledge, information or possess any document(s) or claim to have knowledge, information or possess any document(s)

regarding the incidents and/or transactions which form the basis of UCG contesting the audit findings of the Energy and Water Division of the TRA in Docket No. 01-00704.

RESPONSE: Objection. This interrogatory is overly broad, unduly burdensome and vague. Without waiving this objection, the persons with the knowledge of the type requested include all individuals listed on the respective witness lists filed in this matter filed by UCG, the staff of the TRA and the Attorney General. In addition, other people with knowledge include without limitation, Alesia Rye, Patti Dathe, Bob Cline, David McClanahan, Mark Thessin, Jon Wike and attorneys with the Consumer Advocate Division and Staff of the Consumer Advocate Division.

If it is claimed that the TRA, or any individual claimed to be an employee, agent, or representative of the TRA, made any representations, statements, purported admissions of liability or responsibility, or any other statements whatsoever, to you, to any attorney for or representative of you, or to any third party, as relates to the incidents and/or transactions which form the basis of UCG contesting the audit findings of the Energy and Water Division of the TRA in Docket No. 01-00704, then, with respect to each, state:

the date, time and place;

RESPONSE: Meeting occurred on January 31, 2001 at the TRA.

the identity of the person to whom such statement was made;

RESPONSE: Those in attendance representing UCG at the meeting included Mark Thessin, Patricia Childers, Patti Dathe, Alisa Rye, Bob Cline and John Hack. Members of the staff who attended this meeting were Michael Horne, Pat Murphy and David McClanahan.

the identity of all persons present;

RESPONSE: See Company response to Audit Finding No. 2.

the substance of each such statement; and

RESPONSE: The meeting was not recorded.

whether such statement was recorded, written, or whether notes were made to refresh someone's recollection, and if so, the present location of each such recording, writing, or notes.

RESPONSE: The meeting was not recorded.

With respect to each person you expect to call as an expert witness at the hearing of this matter, state:

their full name and work address;

RESPONSE: Frank Creamer, 730 Walnut Road, Barrington, IL 60010.

each subject matter about which such witness is expected to testify;

RESPONSE: It is expected that Mr. Creamer will testify in support of UCG's position contesting the audit findings in Docket No. 01-00704 and to rebut the testimony of Dr. Stephen Brown.

the substance of the facts and opinions to which the expert is expected to testify;

RESPONSE: Mr. Creamer has not completed his analysis.

a summary of the grounds or basis of each opinion to which such witness is expected to testify; and

RESPONSE: Mr. Creamer has not completed his analysis.

whether or not the expert has prepared a report, letter of memorandum of his findings, conclusions or opinions.

RESPONSE: Mr. Creamer has not completed his analysis.

Identify all other experts consulted or engaged by you, your attorney or your agents regarding your contesting of the audit findings of the Energy and Water Division of the TRA in Docket No. 0 1-00704.

RESPONSE: None.

If UCG or Atmos has informed or educated its Tennessee customers that their natural-gas bills are affected by the company's "gas procurement incentive mechanism," provide copies of all pertinent documents.

RESPONSE: Objection. The interrogatory is vague, overly broad and undefined. In addition, there is no limitation as to time. Without waiving this objection and assuming the "gas procurement incentive mechanism" refers to the PBR approved in Docket No. 97-01364, UCG has in the past provided information concerning the advantages of the PBR mechanism to its customers.

Where UCG or Atmos, or anyone on behalf of UCG or Atmos, has intervened in any proceedings before the Federal Energy Regulatory Commission at any time since the company's "gas procurement incentive mechanism" began in Tennessee, name the FERC dockets and provide full copies of pleadings, briefs and testimony made by the company, or on its behalf, in those dockets.

RESPONSE: Objection. The term "gas procurement incentive mechanism" is vague and undefined in the interrogatory. Without waiving this objection and assuming the quoted phrase refers to the gas commodity mechanism within the PBR, the answer is yes.

If UCG or Atmos have any criteria for intervening in FERC dockets, provide copies of all documents pertaining to such criteria.

RESPONSE: Objection. This interrogatory is vague, overly broad and is ambiguous.

Without waiving this objection, UCG routinely intervenes in FERC Dockets to become a party and monitor the proceeding to obtain data and to participate when necessary. There are no documents which specify any criteria for intervening.

Provide copies of all documents, including email and minutes of the company's Board of Directors, in the possession of the company or its consultants, where the documents are not protected by the attorney-client privilege and where UCG or Atmos discuss the "gas procurement incentive mechanism" in Tennessee.

RESPONSE: Objection. This interrogatory is overly broad, vague, ambiguous and not limited by time. In particular, the phrase "gas procurement incentive mechanism" is not properly defined. Furthermore, it requests documents that are protected by the attorney-client privilege and work product doctrine.

What pipelines have transported natural gas for UCG or Atmos since the time the "gas procurement incentive mechanism" began in Tennessee?

RESPONSE: Objection. The term "gas procurement incentive mechanism" is vague and undefined. Without waiving this objection and assuming the term "gas procurement incentive mechanism" refers to the PBR approved in Docket No. 97-01364, you may refer to the previous invoice from Woodard Marketing, LLC supplied by UCG for a listing of the majority of the pipelines that have transported natural gas to UCG's city gate. See also Ex. 1 to the PGA filings with the TRA.

If UCG or Atmos have at any time since the "gas procurement incentive mechanism" began in Tennessee and before November 2000, paid a pipeline to transport natural gas where the price for transport was less than the maximum price for such transport listed in the pipeline's tariffs filed

with FERC, then provide a record of each transaction, where each record lists the pipeline, its maximum price, the price paid by UCG or Atmos, the month and year of the transaction.

RESPONSE: Objection. This interrogatory is overly broad, vague, unduly burdensome and contains undefined terms.

Explain why a pipeline would transport gas for UCG or Atmos at a price less than the maximum price for transport.

RESPONSE: Objection. The term "pipeline" is vague, overly broad and undefined. Without waiving this objection, a pipeline company will transport gas for UCG at a price less than the maximum FERC rate for transport if UCG has been successful in negotiating a discounted transportation contract.

If UCG or Atmos knows how a pipeline calculates its maximum price to transport gas, show the calculations that lead to the maximum price.

RESPONSE: Objection. The term "pipeline" is vague, overly broad, undefined and unduly burdensome. If you are referring to a pipeline company with whom UCG contracts for transportation of gas, UCG is not privy to the internal calculations made by any of said companies. You may refer to the applicable pipeline company FERC filings for their calculations. If UCG or Atmos has informed any pipeline about the "gas procurement incentive mechanism" in Tennessee, provide copies of all documents, including any contract pending or contingent with any pipeline that knows of the "gas procurement incentive mechanism in Tennessee, any email, telephone logs and any other written documents, including minutes of the company's Board of Directors, where UCG or Atmos told the pipeline about the "gas procurement incentive mechanism" in Tennessee.

RESPONSE: Objection. This interrogatory is vague, unduly broad and not limited by time. The terms "pipeline" and "gas procurement incentive mechanism" are vague, overly broad and are undefined. Assuming your reference to the "gas procurement incentive mechanism" is the gas commodity mechanism included within the PBR, UCG would state that the PBR is a public record.

If UCG or Atmos or their consultants informed any pipeline that the UCG or Atmos intends to use the pipeline's maximum prices in the "gas procurement incentive mechanism" in Tennessee, provide copies any email, telephone logs and any other written documents, including minutes of the company's Board of Directors, where UCG or Atmos told the pipeline about the intent to use the pipeline's maximum prices in the "gas procurement incentive mechanism" in Tennessee.

RESPONSE: Objection. This interrogatory is vague, overly broad, ambiguous and not limited to time. In particular, the terms "pipeline" and "gas procurement incentive mechanism" are not defined. Without waving this objection, UCG does not recall informing a pipeline company that it intends to use the pipeline's maximum prices in the PBR.

If UCG or Atmos or their consultants have ever offered or intend to offer any pipeline a *quid pro quo* or any other consideration in exchange for a pipeline transporting gas for UCG or Atmos at a price less the pipeline's maximum price, then explain why a *quid pro quo* or other consideration is necessary to encourage a pipeline to transport gas at less than the maximum price.

RESPONSE: Objection. This interrogatory is vague, overly broad and ambiguous. In particular, UCG does not understand what the Attorney General means by "quid pro quo." Without waiving these objections, UCG would state that it actively negotiated for the discounted transportation contracts and in doing so utilized its bargaining position in the industry. UCG was

incentivized by the PBR to negotiate these discounts and invested significant time and resources in these negotiations.

If any pipeline ever requested from UCG or Atmos or their consultants a *quid pro quo* or any other consideration in exchange for the pipeline transporting gas for UCG or Atmos at a price less the pipeline's maximum price, then explain why a *quid pro quo* or other consideration is necessary to encourage a pipeline to transport gas at less than the maximum price.

RESPONSE: See response to Interrogatory No. 16.

What incentive does UCG or Atmos have to prevent the pipeline from raising its maximum price when UCG or Atmos is allowed to keep a portion of the difference between the actual price paid and the maximum price?

RESPONSE: Objection. This interrogatory is a hypothetical which does not provide sufficient information from which UCG can adequately respond.

If UCG or Atmos provided to any state regulatory agency (other than the Tennessee Regulatory Authority) testimony, briefs and pleadings regarding the use of maximum pipeline prices in any gas-incentive program or mechanism carried on in states beside Tennessee, provide full copies of those documents.

RESPONSE: See Case No. 2001-00317 for the Kentucky Public Service Commission. To the extent that testimony, briefs and pleadings in this case are not readily available from the Kentucky Public Service Commission, such documents will be provided by UCG at a mutually convenient time and location.

If your response to any Request for Admission is other than an unqualified admission, state for each such Request for Admission the following:

all facts that you contend support in any manner your refusal to admit or your qualification of your admission;

RESPONSE: Based on the working of this interrogatory, subparts a, b, c, d and e do not make sense.

for any information you contend is incorrect or inaccurate provide the correct information;

RESPONSE: See response to Interrogatory No. 20.a.
identify all documents, or any tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission;

RESPONSE: See response to Interrogatory No. 20.a.
the name and address of the custodian of all tangible things identified in response to subsection (b) of this interrogatory; and

RESPONSE: See response to Interrogatory No. 20.a.
the name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or your qualification of your admission.

RESPONSE: See response to Interrogatory No. 20.a.
If you fail to admit or deny any Request for Admission based on your asserted lack of information or knowledge, for each such Request for Admission:
describe your efforts toward satisfying the reasonable inquiry requirement of Rule 36 of the Tenn. R. Civ. Pro.;

RESPONSE: UCG did not fail to admit or deny any requests for admission based on lack of information or knowledge.
identify all documents or any other tangible or intangible thing that you reviewed prior to

determining that you lacked sufficient information or knowledge to be able to admit or deny the request;

RESPONSE: See response to Interrogatory 21.a.

describe and identify what information is known or readily obtainable by you through reasonable inquiry;

RESPONSE: See response to Interrogatory 21.a.

state the grounds for your position that the information set out in your response to subsection (c) of this interrogatory is insufficient to enable you to admit or deny the request.

RESPONSE: See response to Interrogatory 21.a.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Copies of any and all documents identified in your answers or responses to these interrogatories.

RESPONSE: Any documents identified in response to answers to these interrogatories will produced at a mutually convenience time and location.

Copies of any and all documents reviewed to prepare your answers or responses to these interrogatories and/or requests for admissions.

RESPONSE: Objection. This request for production is overly broad, vague and unduly burdensome.

Any and all expert reports which have been obtained from any expert.

RESPONSE: An expert report from Mr. Creamer has not been prepared at this date.

Copies of any and all statements previously made by the TRA. concerning the subject matter of this lawsuit, including, without limitation, any written statements signed or otherwise adopted or

approved by the TRA, and any stenographic, mechanical, electrical, or other type of recording or transcription thereof made by TRA and contemporaneously recorded.

RESPONSE: Objection. This request for production is overly broad, vague and unduly burdensome and UCG does not view this proceeding as a "lawsuit."

Each document, photograph, or any other article or thing whatsoever, which you claim to corroborate any part of your contesting of the audit findings of the Energy and Water Division of TRA in Docket No. 01-00704 (which have not been previously produced or filed in the record), whether as to the issues of liability, causation, damages, credibility or any other issue, or which is adverse to your contentions regarding the issues of liability, causation, damages, or any other issue.

RESPONSE: Objection. This request for production is overly broad, vague and unduly burdensome. Without waiving this objection, see the documents previously produced and/or filed with the TRA.

BAKER, DONELSON, BEARMAN
& CALDWELL, P.C.

By:

Joe A. Conner
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
(423) 752-4417
(423) 752-9527 (Facsimile)

VERIFICATION

I, _____, hereby depose and say, after having been first duly sworn, that I have read the foregoing Interrogatories and the answers and responses thereto are true according to the best of my knowledge, information, and belief.

Name:

Title:

STATE OF

)

)

COUNTY OF

)

Personally appeared before me, _____ with whom I am personally acquainted, and who acknowledged that he has answered the foregoing Interrogatories and executed the foregoing instrument for the purposes therein contained.

Witness my hand, at office, on this _____ day of _____, 2002.

Notary Public

My Commission Expires:

REQUESTS FOR ADMISSION

UCG's inclusion in its Performance Based Ratemaking ("PBR") of the savings resulting from negotiated transportation discounted contracts is inconsistent with the TRA's Final Order in Docket No. 97-0 1364.

RESPONSE: Denied

UCG supplemented their current formulas with additional calculations that are not consistent with the TRA's Final Order on Phase II in Docket No. 97-01364.

RESPONSE: Objection. The term "current formulas" is vague, overly broad and undefined. Without waiving this objection, this request is denied.

UCG inclusion of the negotiated transportation contracts in the PBR for the 2000-2001 plan year is not consistent with the tariff filed by UCG in this matter.

RESPONSE: Denied.

The final calculations that were determined by UCG do not conform to its incentive plan approved in TRA Docket No. 97-0 1364.

RESPONSE: Denied.

There is no market index of maximum prices for the transport of natural gas.

RESPONSE: Objection. The term "market index" is vague, overly broad and undefined. Without waiving this objection, UCG would state that the maximum FERC rates are a market indicator. However, UCG admits that there is not currently an index such as NYMEX, INSIDE FERC or Natural Gas Intelligence which tracks the transportation costs of natural gas.

The PBR covers all the associated commodity costs for purchasing, delivering and storing of gas to the end consumer.

RESPONSE: Admitted.

In the Original Docket (Docket No. 97-0 1364), the TRA collapsed the original five incentive mechanisms of the PBR: (1) gas procurement, (2) seasonal pricing differential, (3) storage gas commodity, (4) transportation capacity cost and (5) storage capacity cost into two mechanisms: (1) gas commodity mechanism and (2) capacity release sales mechanism.

RESPONSE: Admitted.

When the five incentive mechanisms were collapsed into two (2), UCG indicated that the formulas used for these calculations did not need to be changed.

RESPONSE: Objection. The testimony of UCG in Docket No. 97-01364 speaks for itself. The final order on Phase II in Docket No. 97-01364 does not reflect such an indication from UCG. The indices used to calculate transportation costs account for the effects of market-driven pipeline transportation rates.

RESPONSE: Objection. The term "indices" is vague, overly broad and undefined.

Without a proper definition of the term "indices," it is impossible for UCG to respond to this request for admission.

The petition filed on March 31, 1997 by UCG for permission to use an experimental incentive plan does not mention discounted transportation contracts in either the gas commodity or the capacity release sale mechanisms.

RESPONSE: While the initial petition did not expressly mention "discounted transportation contracts," the inclusion of such savings was definitely within the scope, intent and spirit of the PBR which was ultimately approved.

The calculations used to determine the "avoided costs" were transportation rates negotiated in the

contract subtracted from the minimum pipeline tariff rates approved by FERC.

RESPONSE: Denied.

The current method used to calculate benefits for commodity savings is to average the three indices and then multiply it by UCG's total MCF gas purchases.

RESPONSE: Denied.

Under the PBR, when the commodity costs of gas falls within a deadband of 97.7% to 102% of the total benchmark amounts there is no incentive savings or costs.

RESPONSE: Based on UCG's understanding of what is included within the commodity costs of gas, this request is admitted.

A component of the gas procurement mechanism allows UCG to retain 50% of the savings on "gas purchases" that are made below 97.7% of the benchmark.

RESPONSE: Objection. The terms "gas procurement mechanism" are undefined. It is admitted that gas purchases are a component of the gas commodity mechanism and the lower band of the benchmark is 97.7%. UCG is permitted to retain 50% of the savings that are below the lower band of the benchmark.

The benchmark for the PBR is a price index that is composed of the simple average computed each month of the appropriate *Inside FERC Gas Market Report*, *Natural Gas Intelligence* and *NYMEX* indices.

RESPONSE: It is admitted that the benchmark for "a component" of the PBR is a price index that is composed of the simple average computed each month of the appropriate *Inside FERC Gas Market Report*, *Natural Gas Intelligence* and *NYMEX* indices.

During the 2000-2001 plan year, UCG had savings on gas purchases for two (2) months.

RESPONSE: As reflected in the annual report for the 2000-2001 plan year, UCG admits that without taking into account the commodity savings resulting from the NORA contract and discounted commodity transportation contracts it realized shared savings under the gas commodity mechanism in two (2) months.

UCG reported \$1,052,531 in savings from the negotiated transportation contracts and retained \$526,265.

RESPONSE: Admitted with respect to the 2000-2001 annual report.

The alleged savings generated from the negotiated transportation contracts and the alleged savings from the NORA calculations of avoided transportation costs included in the 2000-2001 plan year were not previously included in the first full year of the approved permanent plan.

RESPONSE: Objection. These are not "alleged savings." They reflect savings that were actually realized.

UCG's method for calculation of interest was computed for the 2000-2001 plan year is not calculated the same as the previous plan year.

RESPONSE: Objection. See company response to Audit Finding No. 1.

As to the Request for Admissions,

(Print Name)
Attorney for defendant

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:) **DOCKET NO. 01-00704**
)
UNITED CITIES GAS COMPANY, a)
Division of ATMOS ENERGY)
CORPORATION INCENTIVE PLAN)
ACCOUNT (IPA) AUDIT)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL
ANSWERS TO ATTORNEY GENERAL'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS &
THINGS AND REQUESTS FOR ADMISSION SERVED UPON UNITED
CITIES GAS COMPANY**

The Tennessee Office of the Attorney General, through the Consumer Advocate & Protection Division ("Attorney General"), has submitted a Motion requesting that the Tennessee Regulatory Authority ("TRA") enter an Order compelling full and complete discovery in the above referenced matter. This Memorandum is offered in further support of that Motion.

FACTS

UCG was served with Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company, which were served on UCG on September 4, 2002. On September 19, 2002, Joe Conner, attorney for UCG contacted Russell T. Perkins, Deputy Attorney General of the Consumer Advocate & Protection Division and requested a one day extension of time to file responses to the Attorney General's First Set of Interrogatories, Requests for Production of Documents &

Things and Requests for Admission. Mr. Perkins granted Mr. Conner a one day extension of time. On Friday, September 20, 2002 at 4:49 p.m., Joe Conner sent an unsigned draft response to Russell T. Perkins by electronic mail. Also, Mr. Conner failed to file the draft response with the TRA by the deadline of 2:00 p.m. on September 20, 2002¹ as required by the scheduling order issued on August 29, 2002 by the Hearing Officer.

LAW

TRA Rule 1220-1-2-.11 requires that discovery in contested cases before the agency be “effectuated in accordance with the Tennessee Rules of Civil Procedure.” Rule 26.02(1) of the Tennessee Rules of Civil Procedure permits the parties to obtain any information that is relevant and not privileged.² In Tennessee, the scope of discovery is broad.³ There are minimal limitations and the limitations set forth in Rule 26.02(1) permits limits on discovery of information that is unreasonably cumulative or duplicative, obtainable from another source or unduly burdensome.⁴

In addition, the parties may use various methods of discovery. Rule 33.01 permits the parties to propound written interrogatories upon one another. T.C.P.A. Rule 34.01 allows for requests to produce and permits inspection of documents. Where the party responding does not want to respond, the Tennessee Rules of Civil Procedure require that they may object to the

¹ The deadline established by the scheduling order is September 19, 2002. However, Mr. Conner obtained a one day extension of time to respond.

² TENN. R. CIV. P. 26.02.

³ *See Duncan v. Duncan*, 789 S.W.2d 557, 560 (Tenn. Ct. App. 1990).

⁴ TENN. R. CIV. P. 26.02.

request and state the reasons for the objection.⁵

In the event disputes arise concerning discovery, it is within the discretion of the decision maker to determine the resolution of those disputes.⁶ Additionally, courts have held that the decision maker in discovery disputes “should decline to limit discovery if the party seeking the limitations cannot produce specific facts to support its request.”⁷

Rule 37.01(2) states that when a party fails to answer a question propounded under Rule 30 or 31 or a party fails to answer an interrogatory submitted under Rule 33, the discovering party may move for an order compelling an answer. Additionally, Rule 37.01(3) states that an evasive or incomplete answer is to be treated as a failure to answer.

Rule 37.01(4) states:

If the motion is granted, the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the nonmoving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

The Attorney General urges the TRA to grant the motion to compel in this proceeding. It is through the discovery process that the parties openly try “to find the truth and to prepare for the disposition of the case in favor of the party who is justly deserving of a judgment.”⁸

⁵ TENN. R. CIV. P. 33.01.

⁶ *Roberts v. Blount Mem’l Hosp.*, 963 W.W.2d 744, 747 (Tenn. Ct. App. 1997); *Price v. Mercury Supply, Co.*, 682 S.W. 2d 924, 935 (Tenn. Ct. App. 1984).

⁷ *Duncan*, 789 S.W. 2d at 561.

⁸ Irving Kaufman, *Judicial Control Over Discovery*, 28 F.R.D. 37 (p. 125) (1962).

UCG has repeatedly stated throughout their draft response that the interrogatories were overly broad and vague. Moreover, they have arbitrarily questioned simple definitions in interrogatories that do not require clarification. For example, UCG stated in their draft response that the term “you” or “your” is overly broad. These draft responses are clearly evasive and intended to complicate the discovery process. Moreover, UCG claims that they do not know the definition of “incentive” and its variants referred to in the interrogatories. However, it appears more than 240 times in the transcript.⁹ Also, they have objected to the word “pipeline” in our interrogatory concerning why a pipeline would transport gas at a price less than the maximum price for transport. It is quite clear what the word pipeline means and if UCG is unsure of the definition they could have reviewed the transcript where it appears over 240 times.¹⁰ UCG claimed that the term “pipeline” was vague, overly broad and undefined. These are some examples of the type of draft response received from UCG. Clearly, this hampers the progression of the case and does not allow the Attorney General to proceed in this matter and serves merely to disrupt the discovery process and cause unwarranted, unnecessary delays.

Lastly, the Attorney General must reiterate that discovery is essential in this type of proceeding and provides pertinent information necessary for hearing. Further, a party seeking discovery is entitled to obtain information from the parties about “any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”¹¹

⁹ TRA Docket 97-01364, Hearing Transcript, March 26-31, 1998.

¹⁰ TRA Docket 97-01364, Hearing Transcript, March 26-31, 1998.

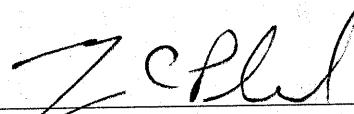
¹¹ TENN. R. CIV. P. 26.02(1).

Therefore, the Attorney General requests that the TRA compel UCG to supply full and complete answers to the discovery request as well as reasonable expenses in obtaining the order.

CONCLUSION

For the reasons provided in the Attorney General's Motion to Compel and further detailed herein, we respectfully request that the TRA enter an Order compelling UCG to respond fully and completely to the discovery served upon them by the Attorney General. Additionally, due to the failure of UCG to respond, our office has been caused to expend additional time and expense in preparing pleadings and ask the TRA to consider all other appropriate sanctions, including dismissal of UCG's objection and/or exclusion of witnesses not timely identified and/or expert witnesses to which expert witness interrogatory responses have not been supplied.

RESPECTFULLY SUBMITTED,



TIMOTHY C. PHILLIPS, B.P.R. #12751
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
(615) 741-3533



SHILINA B. CHATTERJEE, B.P.R. #20689
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 532-3382

Dated: September 24, 2002

CERTIFICATE OF SERVICE

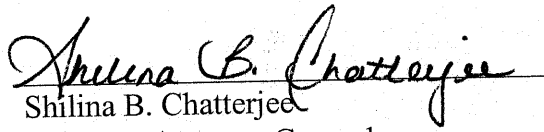
I hereby certify that a true and correct copy of the foregoing was served via facsimile and/or hand delivery on September 24, 2002.

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